IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(C).No. 28992 of 2007(B)

OS.160/2005 of MUNSIFF COURT, KODUNGALLUR

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PETITIONERS:

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1. JOHNY, S/O. CHITTILAPPILLY FRANCIS,
   EDATHIRUTHY DESOM AND VILLAGE,
   KODUNGALLUR TALUK.

2. MOHANDAS, S/O. KATTAKULAM RAMAN,
   -DO- -DO-

3. GANGADHARAN, S/O. KALLANGAL AYYAPPAN,
   -DO- -DO-

BY ADV. SRI.N.K.SUBRAMANIAN
SRI.S.ANANTHAKRISHNAN

RESPONDENT:

SUBRAMANIAN, S/O. MUNAPPIL KUTTAPPAN,
EDATHIRUTHY VILLAGE, KODUNGALLUR TALUK.
(POWER OF ATTORNEY HOLDER OF GUNAVARDHANAN).

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.28992 of 2007

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Dated this the 1st day of October, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside Ext.P1 order. It was an application for issuance of a Commission. The court below directed issuance of a Commission on payment of cost of Rs.500/- to the defendants. Now the said order is challenged by the respondents in the said I.A.

2. Learned counsel for the writ petitioners submits that a Single Bench of this Court as well as a Division Bench has directed that the third respondent, namely, Taluk Surveyor, Kodungallur Taluk has to conduct a survey after issuing notice to the petitioner and the fourth respondent, that is, the petitioner in W.P.(C) No.5937 of 2006, Mohandas and the fourth respondent - Gunavardhanan, whose power of attorney holder has filed this case.

3. A perusal of the plaint in O.S.No.160 of 2005 would

reveal that the property claimed was obtained in a partition deed No.375 of 1989 and also an anterior document No.390 of 1952. With respect to that property, the plaintiff has sought an injunction against the defendants in the suit. The defendants in the suit would contend that the plaintiff is not entitled to such relief at all and there is a puramboke land which has been traspassed into by the plaintiff in the suit and therefore, he is not entitled to any relief. In order to succeed in a suit of this nature, the plaintiff has to establish that the property belongs to him and he is in possession of the property on the basis of the document claimed by him.

4. This Court in the Writ Petition directed the Surveyor to measure the property and fix the survey line after giving notice to all concerned. Or in other words, this Court has given a clear direction to the authorities to demarcate the puramboke land. The court also had made it clear regarding title and possession that it is for the civil court to decide. So in order to resolve the civil dispute between the parties, it will be necessary to find out which is the property covered by the document claimed by the plaintiff and whether the entire plaint schedule property as

claimed by him forms part and parcel of the said document. When it is found that some of the properties claimed by him are not covered by the document or are Government puramboke lands, the situation may change.

5. Therefore, I think, for a proper resolution of the dispute, issuance of a Commission by the civil court with the assistance of a Taluk Surveyor is necessary. Therefore I confirm the order of the learned Munsiff with a direction that the Surveyor, Kodungallur should be the Taluk Surveyor in the case, since he is already directed by the court to find out the puramboke land in the proceedings. Needless to say that if the present writ petitioners want to note any particular points, they can also file work memo before the Commissioner to note down the same.

With these observations, the Writ Petition is disposed of.

M.N.Krishnan,
Judge.

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